THE HON'BLE MR JUSTICE B.PRAKASH RAO

And

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOs.7424 of 1998, 10429 of 2000, 924 of 2001, 7520, 6590, 13201 of 2002 and 31052 of 1997

20th September 2006

1. W.P.No.7424 of 1998

Between:

L.Suryanarayana, S/o.late Guraiah Naidu, 39 years, Occ.Higher Grade Draughtsman, O/o.The Telecom district Engineer, Opp.Suryamahal, Sanchar Bhavan, Srikakulam.

...PETITIONER

AND

1. Union of India, rep.by its Secretary, Ministry of Finance, Dept.of Expenditure, New Delhi.

And four others.

...RESPONDENTS

And Batch.

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOs.7424 of 1998, 10429 of 2000, 924 of 2001, 7520, 6590, 13201 of 2002 and 31052 of 1997

COMMON ORDER: (Per the Hon'ble Mr Justice Ramesh Ranganathan)

All these Writ Petitions can be disposed of by a common order since the entire controversy revolves around fitment, in the higher scale of pay, consequent to the Office Memorandum dated 19.10.1994.

While the petitioners in W.P.Nos.7424 of 1998 and 31052 of 1997 were given the benefit of higher scales of pay, which was later sought to be recovered, the respondents in W.P.Nos.10429 of 2000, 924 of 2001, 7520, 6590 and 13201 of 2002 claim the benefit of higher scales of pay under the said Office Memorandum dated 19.10.1994. The submission made on behalf of the employees is that since they were given the benefit of higher scale of pay, much prior to the Office Memorandum dated 19.10.1994, they were entitled under the Office Memorandum dated 19.10.1994, to be fitted

in the next higher scale of pay without being promoted to the next higher post. The submission, in effect, is that while their promotion from Grade III to Grade II and from Grade II to Grade I would depend on the availability of vacancies in the higher posts, they were nonetheless entitled to be fitted in the next higher scale, pursuant to the said Office Memorandum dated 19.10.1994 i.e. in scales of pay higher than what they were fitted prior to the proceedings, i.e., prior to Office Memorandum dated 19.10.1994 having been issued.

Sri A.Sanjeev Kumar, learned counsel, appearing on behalf of the Department of TeleCommunications, would submit that in view of the Full Bench Judgment of this Court, in W.P.No.10429 of 2000 dated 24.09.2004, the employees were not entitled for higher emoluments or higher pay scales till they were actually promoted to higher posts in accordance with the Rules. Sri S.Ramakrishna Rao and Sri Ch.Jagannadha Rao, learned counsel appearing on behalf of the employees would submit that since Office Memorandum dated 19.10.1994 is a one time exercise and as the employees were entitled, under the said Office Memorandum, to be given higher scales of pay, the Full Bench judgment required them to be

fitted in the scales of pay higher than what they had been placed in earlier. Learned counsel would submit that, in compliance with the order of the Tribunal in W.P.No.31052 of 1997, some of the employees had already been given the benefit and it would be inequitable for the Department to now recover the said amount.

The Full Bench of this Court, in W.P.No.10429 of 2000 dated 24.09.2004, referred with approval to the Division Bench judgment of the Madras High Court in ***Union of India rep. By the Chairman, Telecom Commission, Department of Telecommunications, New Delhi and another v. R.Jothimani and another***[1]. In Para 10 of its judgment, the Madras High court held:

> ".....Again, even if the office memorandum dated 19.10.1994 was to be wholly relied upon, we must hasten to point out that even there, in paragraph 3 it is specifically provided that once the Draughtsmen are placed in the regular pay scale, further promotions would be made against the available vacancies in the higher grade. It is obvious that these available vacancies in the higher grade would be obviously in terms of the recruitment rules. In this behalf, Mr.Udhayakumar, produced before us the amended rules under Art.309 by which the three grades of Draughtsmen were created. There also in the schedule we find that out of the total number of posts, 900 posts are reserved for the Grade-III Draughtsmen, 450 are meant for Grade-II Draughtsmen and only 150 are earmarked for Grade-I Draughtsmen, this is in keeping with the ratio of 60:30:10 provided by the Office Memorandum dated 23.08.1993. Unfortunately, even these rules, for the reasons best known, were not placed before the Tribunal nor did the Tribunal insist upon their production. Once the rules become available, obviously, the Office Memorandum Dated 19-10-1994 and more particularly, paragraph 3, which

> makes a clear-cut reference to the words "available vacancies" will have to be read in the proper spirit. In paragraph 3, there is a clear-cut reference made to the recruitment rules. At least, that should have put the Tribunal on guard. Unfortunately, it seems that the rules were not placed before the learned Members. Be that as it may, since there is a specific recruitment rules available providing for the ratio amongst the three grades of Draughtsmen and once a specific reply has been given by the Government suggesting that though the first respondent had put in four years of minimum service in Grade II, there was no post available in Grade-I as per the ratio fixed, that should have ordinarily been the end of the matter. The first respondent did not in any manner show that actually the posts were available in Grade-I and that in spite of such availability, his claim was not accepted which was made by making a specific representation. We, therefore, are unable to agree with the Tribunal and more particularly its reasoning that since there is no ratio provided in the Office Memorandum dated 19.10.1994 therefore, the first respondent automatically became entitled to be fixed in the higher grade or to be taken to the grade-I Draughtsmen post on the completion of his four years of service. According to us, even if the first respondent became entitled by reason of his continuous service of four years in Grade-II yet he could be entitled to the higher emoluments or the higher pay scale only if the post was available in Grade-I in terms with the ratio provided for by the rules and more particularly by office memorandum dated 23.08.1993. That being the case, we must hold that the Tribunal was in error in taking the view that it did, we accordingly set aside the order of the Tribunal and order the dismissal of the original application. The writ petition is allowed. However, there shall be no orders as to the costs. W.M.P.No.869 of 2000 is closed".

It is clear from the said judgment that the employees were entitled for higher scales of pay only if they were promoted to higher posts. Since admittedly none of the employees were promoted to higher posts, the question of their being given the benefit of higher pay scales, attached to higher posts, on the presumed theory of upgradation cannot be accepted. We are bound by the law laid

down by the Full Bench of this Court. Any submissions made to the contrary, by the learned counsel appearing on behalf of the employees, cannot be examined by us in these Writ Petitions.

Following the judgment of the Full Bench of this Court in W.P.No.10429 of 2000 dated 24.09.2004, W.P.Nos.7424 of 1998 and 31052 of 1997 are dismissed and W.P.Nos.10429 of 2000, 924 of 2001, 7520, 6590 and 13201 of 2002 are allowed. However, in the circumstances, without costs.

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(B.PRAKASH RAO, J)

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(RAMESH RANGANATHAN, J)

20th September 2006
RRB

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[1] Writ Petition No.597 of 2000